

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Bunthoeun Kong,	)	
	)	
	)	CASE NO: 20-CV-10119-MPK
Plaintiff,	)	
	)	
	)	
vs.	)	
	)	
United States of America,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF’S RULE 56.1 CONCISE STATEMENT OF MATERIAL FACTS**

1. On or about April 12, 1996, the Executive Office for Immigration Review ordered Plaintiff Bunthoeun Kong deported to Cambodia (“1996 Deportation Order”). *See* Decl. of Ass’t Field Off. Dir. Alan Greenbaum (“Greenbaum Decl.”), Doc. 12-1, at ¶ 5; Decl. of Acting Ass’t Field Off. Dir. David T. Wesling (“Wesling Decl.”), Doc. 12-2, at ¶ 6.

2. Pursuant to the 1996 Deportation Order, the legacy Immigration and Naturalization Service (“INS”) held Mr. Kong in immigration detention and attempted to effect his deportation to Cambodia. *See* Greenbaum Decl., Doc. 12-1, at ¶ 5; Decl. of Bunthoeun Kong (“Kong Decl.”), Ex. 1, at ¶ 13; Suppl. Decl. of Bunthoeun Kong (“Suppl. Kong Decl.”), Ex. 2, at ¶ 16 & Sub-Ex. E;

3. On or about July 21, 1999, the INS determined that Mr. Kong’s “removal from the United States [was] not possible or practicable.” Suppl. Kong Decl., Ex. 2, at Sub-Ex. E.

4. On or about June 23, 2000, the INS released Mr. Kong from detention pursuant to an Order of Supervision. *See* Greenbaum Decl., Doc. 12-1, at ¶ 5; Wesling Decl., Doc. 12-2, at ¶ 6; Kong Decl., Ex. 1, at ¶ 12 & Sub-Ex. C.

5. On or about March 5, 2018, U.S. Immigration and Customs Enforcement (“ICE”) added Mr. Kong to a list of Cambodian nationals whom the agency wished to be interviewed by the Cambodian government, which – following the interview – would determine if Kong could receive a Cambodian travel document and be repatriated to Cambodia. *See* Greenbaum Decl., Doc. 12-1, at ¶ 7; Wesling Decl., Doc. 12-2, at ¶¶ 8-9; Decl. of Deputy Ass’t Dir. John A. Schultz, Jr. (“Schultz Decl.”), Ex. 3, at ¶¶ 5-12.

6. On or about April 17, 2018, ICE officers arrested and detained Mr. Kong to facilitate his detained interview with the Cambodian government. *See* Greenbaum Decl., Doc. 12-1, at ¶ 7; Wesling Decl., Doc. 12-2, at ¶¶ 10-11; Kong Decl., Ex. 1, at ¶ 28.

7. Prior to his arrest, ICE advised Mr. Kong neither of its desire that he submit to an interview by the Cambodian government nor of its plans to facilitate that interview by arresting and detaining him. *See* Wesling Decl., Doc. 12-2, at ¶¶ 7-11; Kong Decl., Ex. 1, at ¶¶ 24-28.

8. At the time of his arrest, ICE did not know whether Cambodia would repatriate Mr. Kong following his interview and had no individualized facts concerning Kong in its possession which would alter the 1999 INS determination that Kong’s repatriation to Cambodia was impossible or impracticable. *See* Greenbaum Decl., Doc. 12-1, at ¶ 7; Wesling Decl., Doc. 12-2, at ¶¶ 7-9.

9. At the time ICE officers arrested Mr. Kong, ICE had just concluded a prior round of arrests and detained interviews with the Cambodian government – a process which spanned from December of 2017 through March of 2018 and at the conclusion of which twenty-three

detainees were not accepted for repatriation. *See* Schultz Decl., Ex. 3, at ¶¶ 13-16; Corrected Decl. of Deputy Ass't Dir. John A Schultz, Jr., Ex. 4, at ¶ 3.

10. ICE released Mr. Kong from detention on June 14, 2018 – following a Petition For Writ of Habeas Corpus filed by Kong – and Kong was aware that he was detained during this time. *See* Wesling Decl., Doc. 12-2, at ¶ 12; Decl. of Ethan R. Horowitz (“Horowitz Decl.”), Ex. 5, at ¶ 1; *see also, generally*, Kong Decl., Ex. 1.

11. During the entirety of Mr. Kong’s ICE detention, ICE lacked any individualized and fact-based suspicion that Cambodia would repatriate Kong. *See* Decl. of Ass’t Field Off. Dir. Anthony Ciulla, Ex. 6, at ¶ 5; Wesling Decl., Doc. 12-2, at ¶¶ 9-12.

12. On or about February 19, 2019, Mr. Kong – through counsel – presented a claim to the U.S. Department of Homeland Security concerning the injuries he suffered as a result of his unlawful arrest and detention by ICE officers and ICE acknowledged receiving this claim on February 22, 2019. *See* Horowitz Decl. at ¶¶ 2-3 & Sub-Exhs. A-B.

13. By January 21, 2020, having received no further correspondence concerning his claim, Mr. Kong commenced the above-captioned action through counsel. *See id.* at ¶ 5.

Respectfully submitted,  
BUNTHOEUN KONG,

Dated: May 11, 2020

By his attorney,

/s/ Ethan R. Horowitz

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